

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA4 Eric Kohli,
5 Plaintiff

6 v.

7 Ajay G. Dayal, et al.,
8 Defendants

Case No. 2:20-cv-00538-CDS-NJK

Order Denying as Moot Defendants' Motion to Dismiss, Denying Defendants' Amended Motion to Dismiss for Lack of Subject-Matter Jurisdiction, Granting Dayal's Joinder, and Denying Kohli's CounterMotion for Sanctions

9 [ECF Nos. 149, 150, 151, 154]

10 This action is brought by plaintiff Eric Kohli, a lawyer representing himself pro se, for the
 11 payment of money allegedly owed due to performance of an employment contract. Kohli sued
 12 defendants Ajay G. Dayal, Quantified Investment Group LLC, Quantified Capital Group, Pacific
 13 Bay Lending Group, and Miss Elegant Expo for defendants' refusal to pay Kohli's salary and
 14 wages after he performed two months' work for defendants and was not paid. *See generally* First
 15 Amended Complaint (FAC), ECF No. 17. Pending before the court are defendants Quantified
 16 Investment Group's and Quantified Capital Group's motion to dismiss for lack of subject-matter
 17 jurisdiction. ECF No. 151.¹ Dayal filed a joinder. ECF No. 150.² Given that Dayal is currently
 18 without counsel, I grant the joinder.³ The court ordered briefing on the issue of jurisdiction after
 19 defendants alleged, for the first time in the proposed joint pre-trial order (ECF No. 140), that

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21 ¹ Defendants originally filed the motion to dismiss at ECF No. 149, but later filed an amended version.
 22 Counsel is reminded that a "notice of corrected image" should have been filed, correcting the document,
 23 instead of filing an amended motion. Accordingly, defendants' original motion, ECF No. 149, is denied as
 24 moot as it was replaced by ECF No. 151. Further, the amended motion violates Local Rule IC 2-2(3) that
 requires that exhibits and attachments "be attached as separate files" not as part of the base document.
 LR IC 2-2(3)(A). While the original motion complied with the rule, the amended version did not.
 Because the court must resolve the jurisdictional challenges, the court does not strike the pleading.
 Counsel is cautioned, however, that future violations may result in the court striking pleadings that do
 not comply with the rules.

² Dayal filed joinder to defendants' original motion docketed at ECF No. 149. I sua sponte apply and grant
 his request for joinder to the amended motion docketed at ECF No. 151.

³ However, Dayal is cautioned however that joinders are not a matter of right, but rather, a motion should
 be file seeking joinder to another pleading.

1 jurisdiction was lacking. Also pending before the court is Kohli's countermotion for sanctions,
 2 filed in conjunction with his opposition to the motions to dismiss. ECF No. 154. For the reasons
 3 set forth herein, I deny defendants' motions to dismiss and deny Kohli's countermotion for
 4 sanctions.

5 **I. Discussion**

6 **A. Subject-matter jurisdiction**

7 In evaluating a motion to dismiss for lack of subject-matter jurisdiction, the court must
 8 accept as true the allegations of the complaint where only the sufficiency of the allegations
 9 supporting jurisdiction are challenged. *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553,
 10 1558 (9th Cir. 1987) (internal quotations and citations omitted). If a federal court concludes that
 11 it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety. *Arbaugh*
 12 *v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citing 16 Moore § 106.66[1], pp. 106–88 to 106–89). That is
 13 because “[f]ederal courts are courts of limited jurisdiction,’ possessing ‘only that power
 14 authorized by Constitution and statute.’” See U.S. Const. art. III, § 2, cl. 1; *Gunn v. Minton*, 568 U.S.
 15 251, 256 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). One type
 16 of federal jurisdiction is based on diversity, which exists in “all civil actions where the matter in
 17 controversy exceeds ... \$75,000 ... and is between ... [c]itizens of different States.” 28 U.S.C. §
 18 1332(a)(1). Alternatively, this court has jurisdiction over cases invoking a federal question, that
 19 is “actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §
 20 1331. Further, district courts have jurisdiction to hear “[o]nly those cases in which a well-
 21 pleaded complaint establishes either that [1] federal law creates the cause of action or that [2]
 22 the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal
 23 law.” *Armstrong v. N. Mariana Islands*, 576 F.3d 950, 954–55 (9th Cir. 2009).

24 A challenge to subject-matter jurisdiction “may be facial or factual.” *Safe Air for Everyone v.*
 25 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial challenge is one that attacks the allegations in
 26 the complaint. In those instances, the court generally presumes the allegations in the complaint

1 are true. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). If instead the
 2 challenge disputes the truth of the allegations that would give rise to federal jurisdiction, the
 3 challenger lodges a “factual attack,” and the court may review evidence beyond the confines of
 4 the complaint without assuming the truth of the plaintiff’s allegations. *Safe Air*, 373 F.3d at 1039.
 5 The burden of establishing subject-matter jurisdiction rests with the plaintiff. *Motlagh v. Qatar*
 6 *Airways*, 445 F. Supp. 3d 852, 855 (S.D. Cal. 2020) (citing *Kokkonen*, 511 U.S. 377).

7 The complaint alleges jurisdiction under two sections of the Fair Labor Standards Act
 8 (FLSA), 29 U.S.C. § 207(a)(1) and 29 U.S.C. § 216(b). ECF No. 17. Defendants’ motion to dismiss
 9 lodges a factual attack on the complaint. Their motion rises and falls on their argument that the
 10 Nevada Labor Commissioner’s finding “no employer/employee relationship could be established
 11 between Mr. Kohli and Quantified” is a finding of fact, to which Kohli did not object, therefore
 12 depriving this court of jurisdiction. *See generally* ECF No. 151. I disagree.

13 There is no evidence that there was a final judgment on the merits issued by the labor
 14 commissioner. The parties both submitted the letter from the commissioner’s investigator
 15 stating that he was “unable to establish an employer/employee relationship.” *See* Defs.’ Ex. 5,
 16 ECF No. 151 at 26; Pl.’s Ex. 2, ECF No. 154-2. The plain language of that letter shows defendants’
 17 argument that the commissioner “ruled factually there was no employer/employee relationship”
 18 is inaccurate. ECF No. 151 at 11. The commissioner’s *inability* to determine the employee/employer
 19 relationship between Kohli and defendants does not equate to a finding that there was *no*
 20 relationship. Defendants fail to supply any points and authorities supporting their argument
 21 that a letter from the commissioner’s investigator—not the commissioner—is a final judgment on
 22 the merits. In fact, defendants fail to explain how a decision on the merits could have been
 23 reached if the commissioner was lacking jurisdiction, and further there was “no hearing []
 24 conducted before the Assistant Labor Commissioner,” but rather the labor commissioner
 25 investigator merely held a “conference[.]” Defs.’ Ex. 8, ECF No. 151 at 33. Further, there is no
 26 evidence before the court that Kohli gave up or waived his rights to pursue his FLSA claims. *Cf.*

1 *Argento v. Sylvania Lighting Servs. Corp.*, 127 F. Supp. 3d 1060, 1070 (D. Ariz. 2015) (finding plaintiffs
 2 expressly “waiv[ed] all rights to file any additional such claims, actions, etc. relating to such
 3 wage claim[s]” and that “plaintiffs gave up [the] right to seek review of the administrative
 4 decision” and “to file [the] action” in district court). Rather, the letter from the commissioner’s
 5 investigator directs Kohli to pursue his claim in a court with proper jurisdiction. Stated
 6 otherwise, defendants’ motion lack merit. Accordingly, defendants’ motion to dismiss for lack of
 7 subject-matter jurisdiction is denied.

8 **B. Kohli’s counter motion for sanctions is denied without prejudice.**

9 Kohli moves this court to issue sanctions against defendants for challenging jurisdiction,
 10 Arguing that “Defendants never had any legitimate challenge to this Court’s subject-matter
 11 jurisdiction.” ECF No. 154 at 9. Defendants oppose the motion, arguing that FRCP 11(c)(2)
 12 requires the motion be filed separately, not incorporated into an opposition to the motion to
 13 dismiss. ECF No. 155 at 13. Defendants also argue the counter motion is devoid of any substantive
 14 analysis. *Id.* I agree with defendants’ first argument. Rule 11(c)(2) states that “[a] motion for
 15 sanctions **must** be made separately from any other motion and must describe the specific
 16 conduct that allegedly violates Rule 11(b).” Fed. R. Civ. P. 11(c)(2) (emphasis added). Kohli
 17 failed to comply with the plain language of the rule and therefore his motion is denied without
 18 prejudice.⁴ See *Love v. Kardooni*, 2022 U.S. App. LEXIS 26500, *4 (9th Cir. Sept. 22, 2022)
 19 (declining to address embedded argument for Rule 11 sanctions because defendants failed to file
 20 a separate motion for Rule 11 sanctions).

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 23 ⁴ Strict compliance with the rule is important because “Rule 11 is an extraordinary remedy, one to be
 24 exercised with extreme caution.” *Operating Eng’rs Pension Tr. v. A-C Co.*, 859 F.2d 1336, 1345 (9th Cir. 1988).
 25 In his reply to the motion to dismiss, Kohli requests permission to refile his sanctions motion as a
 26 separate document. ECF No. 156 at 5. Kohli was required to file his sanctions motion separately the first
 time. Fed. R. Civ. P. 11(c)(2). It is not a matter of what “the Court prefers” (ECF No. 156 at 5), but the
 procedural rule that all litigants must follow to bring a Rule 11 motion. Given a preference to resolve
 motions on the merits, the court will grant Kohli one opportunity to refile his Rule 11 motions properly.
 Kohli is cautioned that any failures to comply with the procedural or substantive requirements of Rule 11
 will result in denial of the motion.

1 II. Conclusion

2 IT IS THEREFORE ORDERED that defendants' motion to dismiss for lack of subject-
3 matter jurisdiction [ECF No. 151] is DENIED. Accordingly, defendants' original motion [ECF
4 No. 149] is denied as moot.

5 IT IS FURTHER ORDERED that Dayal's request for joinder [ECF No. 150] is granted.

6 IT IS FURTHER ORDERED that Kohli's countermotion for sanctions [ECF No. 154] is
7 DENIED without prejudice.

8 Dated: March 27, 2024

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10 Cristina D. Silva
11 United States District Judge

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